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Human rights situations that require the Council's attention

Albania,* Andorra,* Australia, Austria,* Belgium, Bulgaria,* Canada,* Chile, Croatia, Cyprus,* Denmark,* Finland,* France,* Georgia, Germany, Greece,* Iceland,* Liechtenstein,* Lithuania,* Luxembourg,* Malta,* Monaco,* Montenegro,* Netherlands,* Norway,* Paraguay,* Poland,* Romania,* San Marino,* Slovenia, Spain, Sweden,* Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America: draft resolution

37/... Situation of human rights in South Sudan

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Guided also by the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and relevant human rights treaties,

Reaffirming that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights,

Recalling Human Rights Council resolution 34/25 of 24 March 2017, the twenty-sixth special session of the Council, including its resolution S-26/1 of 14 December 2016 on the situation of human rights in South Sudan, and its resolution 31/20 of 23 March 2016, in which the Council established the Commission on Human Rights in South Sudan, and all other previous Human Rights Council and Security Council resolutions and President's statements on South Sudan,

Deeply alarmed by the report of the Commission on Human Rights in South Sudan,[1] in which it noted that some of the human rights violations may amount to war crimes and crimes against humanity, and that the conflict and violence in South Sudan includes attacks against civilians, targeting civilians on the basis of their ethnic identity, killings, abductions, torture, rape and other forms of sexual and gender-based violence, deliberate denial of food, looting and destruction of homes and villages, violence against children, recruitment or use of child soldiers, and attacks on schools or hospitals,

Welcoming the joint reports of the Office of the High Commissioner for Human Rights and the United Nations Mission in South Sudan of January 2017, June 2017 and February 2018 and the recommendations contained therein, deeply concerned by their findings and welcoming the reports of the Secretary-General as well as the Panel of Experts

* State not a member of the Human Rights Council.

[1] A/HRC/37/71.

on South Sudan established pursuant to Security Council resolution 2206 (2015) of 3 March 2015,

Noting with grave concern all relevant decisions and communiqués of the African Union and the Intergovernmental Authority on Development, as well as the Peace and Security Council of the African Union communiqué of 22 September 2017, in which the Council, inter alia, strongly condemned all acts of sexual and gender-based violence and the unlawful recruitment of children into military activities and called upon the Government of South Sudan to investigate alleged crimes and to hold those responsible to account without delay, and its communiqué of 8 February 2018, in which it, inter alia, reemphasized the call by the African Union upon South Sudan to urgently sign without further delay the memorandum of understanding on the establishment of the hybrid court for South Sudan,

Welcoming that the Government of South Sudan has committed to cooperating with the Office of the High Commissioner, the special procedures of the Human Rights Council, the universal periodic review and the Commission on Human Rights in South Sudan in the fulfilment of its mandate,

Calling upon all parties to the conflict to implement fully the Agreement on the Resolution of the Conflict in the Republic of South Sudan and to conclude a permanent ceasefire, and reminding the parties of their international obligations, including those relating to the protection of civilians, as well as their obligations under the Cessation of Hostilities Agreement of 21 December 2017, and expressing grave concern at the parties' continued, verified violations of that Agreement, and urging them to pursue the path of a peaceful resolution to the existing conflict through the Intergovernmental Authority on Development High-Level Revitalization Forum,

Reiterating the concerns of the Human Rights Council related to ethnically motivated incitement to hatred and violence by all sides, reports of targeting of civilians based on ethnicity and widespread sexual and gender-based violence, the escalation of violence and the targeting of civilians and health-care facilities,

Expressing grave concern that 5.1 million South Sudanese are food insecure, that 1.9 million are internally displaced within South Sudan and that approximately 2.4 million are displaced outside the country, noting that the humanitarian crisis is caused primarily by conflict, commending humanitarian agencies for their continued assistance to the affected populations, and recalling the need for all parties to the conflict to allow and facilitate the full, safe and unhindered access of relief personnel, equipment and supplies free of unnecessary duties and taxes and the timely delivery of humanitarian assistance to all those in need, in particular to internally displaced persons and refugees, based on the United Nations guiding principles of humanitarian assistance, including humanity, neutrality, impartiality and independence,

Emphasizing the inviolability of United Nations premises, and underlining that targeting civilians and attacks against United Nations missions may constitute war crimes,

Condemning in the strongest terms all attacks against humanitarian personnel and facilities that have resulted in the death of at least 95 humanitarian personnel since December 2013, expressing grave concern for the civilians who sought safety in protection-of-civilians sites who have been attacked, killed, traumatized or displaced, and the serious damage caused to the sites, including to medical clinics and schools, which were burned down and destroyed, and at sexual and gender-based violence against women and girls exiting protection-of-civilians sites throughout the country,

Emphasizing that States have the primary responsibility for the promotion and protection of human rights, and recalling that the Government of South Sudan has the responsibility to protect all of its population in the country from genocide, war crimes, ethnic cleansing and crimes against humanity,

Gravely concerned about ongoing reports of widespread sexual and gender-based violence committed against women and girls and instances of conflict-related rape and gang rape, coupled with beatings and abductions, recognizing the importance of providing timely assistance and protection to survivors of sexual and gender-based violence, including sexual and reproductive health, psychosocial, legal and livelihood support and other

multisectoral services for survivors of sexual and gender-based violence, including working with communities to reintegrate those affected by sexual and gender-based violence, and taking into account the specific needs of persons with disabilities,

Emphasizing the importance of good governance and the rule of law as key elements of conflict prevention, peacekeeping, conflict resolution and peacebuilding, expressing particular concern at the undue reduction of democratic space in South Sudan, including through undue restrictions on the freedom of expression and the freedoms of peaceful assembly and association, attacks on journalists and media workers, and the limitations on the operations of civil society, human rights defenders and the media, and stressing the responsibility of the Government of South Sudan to address these issues in the interest of fostering an open and inclusive political environment,

Expressing concern that the situation in South Sudan continues to be characterized by impunity, while noting the steps being made towards accountability,

Recognizing that transitional justice mechanisms are important elements in a national reconciliation process, including by addressing accountability, reparations, truth-seeking and guarantees of non-recurrence, and underlining the role that domestic, regional and international accountability mechanisms can play in assisting South Sudan to ensure accountability,

1. *Condemns in the strongest possible terms* the ongoing violations and abuses of human rights and violations of international humanitarian law in South Sudan, including those involving targeted killings of civilians, ethnically targeted violence, widespread sexual and gender-based violence, including rape and gang rape, which can be used as a weapon of war, the recurring recruitment and use of children, arbitrary arrests and detention, torture, arbitrary denial of humanitarian access and attacks on schools, places of worship, hospitals and United Nations and associated peacekeeping personnel by all parties, and the impunity for such violence by all armed groups, and condemns the harassment and violence directed at civil society, human rights defenders, humanitarian personnel and journalists, and emphasizes that those responsible for violations and abuses of human rights and violations of international humanitarian law must be held accountable;

2. *Demands* that all actors put a halt to all violations and abuses of human rights and all violations of international humanitarian law, and strongly calls upon the Government of South Sudan to ensure the protection and promotion of human rights and fundamental freedoms;

3. *Notes with appreciation* the report of the Commission on Human Rights in South Sudan,[1] and the recommendations contained therein;

4. *Recognizes* the important role and efforts of the Intergovernmental Authority on Development in bringing forward the High-Level Revitalization Forum to work towards a peaceful resolution to the conflict;

5. *Also recognizes* the important role of the Joint Monitoring and Evaluation Commission to support the Agreement on the Resolution of the Conflict in the Republic of South Sudan and its ceasefire provisions, and urges all parties and international partners to engage constructively with the Commission and other bodies created by the Agreement;

6. *Further recognizes* the important role played by the African Union High Representatives for South Sudan in support of an inclusive process for National Dialogue and the implementation of the Agreement on the Resolution of the Conflict in the Republic of South Sudan, and urges all parties and international partners to engage constructively with the African Union Commission, the African Union High Representative for South Sudan, and other bodies created by the Agreement;

7. *Stresses* that those responsible for violations of international humanitarian law and violations and abuses of human rights, including any that amount to war crimes or crimes against humanity, should be held accountable;

8. *Calls upon* the Government of South Sudan to investigate all violations and abuses of human rights and violations of international humanitarian law and to hold those responsible to account, while affording fair trial protections to the accused and supporting victims and protecting potential witnesses before, during and after legal proceedings;

9. *Urges* the Government of South Sudan to take steps immediately to protect the rights to freedom of expression, peaceful assembly and association in accordance with its international human rights obligations, and to, among other things, ensure that members of civil society organizations and the media can operate freely and without intimidation;

10. *Strongly urges* all parties to end and prevent violations and abuses of human rights committed against children, and calls upon all parties to end immediately the unlawful recruitment of children to armed groups and to release all children that have been unlawfully recruited to date;

11. *Recognizes* the important role that women play in building peace, and calls for the protection and promotion of the rights of women, their empowerment and participation in peacebuilding, conflict resolution and post-conflict processes, in accordance with Security Council resolution 1325 (2000) of 31 October 2000 and subsequent resolutions on women, peace and security, including Council resolution 2242 (2015) of 13 October 2015;

12. *Emphasizes* the need for the Government of South Sudan to ensure the participation of women during all stages and in all structures envisaged in the Agreement on the Resolution of the Conflict in the Republic of South Sudan, including the Intergovernmental Authority on Development High-Level Revitalization Forum;

13. *Supports* the establishment of transitional justice institutions, and urges the Government of South Sudan to sign the memorandum of understanding with the African Union to establish the hybrid court for South Sudan to investigate and prosecute those responsible for violations or abuses of international human rights and international humanitarian law, where applicable, and/or applicable South Sudanese law, and calls upon all parties to cooperate fully in the implementation of the Agreement on the Resolution of the Conflict in the Republic of South Sudan, including chapter V thereof;

14. *Notes with appreciation* that the Government of South Sudan has cooperated with the Office of the United Nations High Commissioner for Human Rights, the special procedures of the Human Rights Council, and the Commission on Human Rights in South Sudan in the fulfilment of its mandate, including by authorizing travel to and within the country and providing meetings and relevant information, and calls upon the Government to continue to cooperate fully and constructively with and to provide unhindered access to them, as well as to the United Nations Mission in South Sudan, and regional, subregional and international mechanisms on the ground;

15. *Reaffirms* the importance of the mandate of the Commission on Human Rights in South Sudan, with continued emphasis on the need to establish the facts and circumstances of alleged violations and abuses of human rights with a view to ensure that those responsible are held to account, and welcomes the recommendations made by the Commission on ending impunity and ensuring accountability;

16. *Decides* to extend the mandate of the Commission on Human Rights in South Sudan, composed of three members, for a period of one year, renewable as authorized by the Human Rights Council, with the following mandate:

(a) To monitor and report on the situation of human rights in South Sudan, and to make recommendations to prevent further deterioration of the situation with a view to its improvement;

(b) To determine and report the facts and circumstances of, collect and preserve evidence of, and clarify responsibility for alleged gross violations and abuses of human rights and related crimes, including sexual and gender-based violence and ethnic violence, with a view to ending impunity and providing accountability, and to make such information available also to all transitional justice mechanisms, including those to be established pursuant to chapter V of the Agreement on the Resolution of the Conflict in the Republic of South Sudan, including the hybrid court for South Sudan, once established in cooperation with the African Union;

(c) To report on the factual basis for transitional justice and reconciliation;

(d) To provide guidance on transitional justice, including accountability and reconciliation and healing, as appropriate, and – once the Government of South Sudan commits to cooperating with the African Union on establishing the hybrid court for South

Sudan – to make recommendations on technical assistance to the Government to support accountability, reconciliation and healing;

(e) To engage with the Government of South Sudan, international and regional mechanisms, including the United Nations, the United Nations Mission in South Sudan, the African Union, including by building upon the work of its Commission of Inquiry on South Sudan and its African Commission on Human and Peoples' Rights, the Intergovernmental Authority on Development, including the Partners Forum, the Chair of the Joint Monitoring and Evaluation Commission and civil society, with a view to providing support to national, regional and international efforts to promote accountability for human rights violations and abuses;

(f) To make recommendations on technical assistance and capacity-building, as appropriate, including to law enforcement institutions, on the promotion and protection of human rights and fundamental freedoms, including on addressing sexual and gender-based violence;

17. *Strongly urges* the Government of South Sudan to appoint a special representative on sexual and gender-based violence, as previously called for by the Human Rights Council;

18. *Requests* the Office of the High Commissioner to provide the full administrative, technical and logistical support necessary to enable the Commission on Human Rights in South Sudan to carry out its mandate;

19. *Requests* the Commission on Human Rights in South Sudan to present an oral update to the Human Rights Council at its thirty-ninth session in an interactive dialogue, and to present a comprehensive written report, in an interactive dialogue, to the Council at its fortieth session;

20. *Requests* the Commission on Human Rights in South Sudan to submit its report and recommendations to the Human Rights Council and then share them with the African Union and all relevant organs of the United Nations, including the United Nations Mission in South Sudan;

21. *Decides* to remain seized of the matter.